IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 20261 of 2006(K)

AGAINST THE ORDER IN IA 265/2006 IN OS.283/2004 of MUNSIFF'S COURT, PUNALUR
.....

PETITIONER:

MATHAIKUTTY, AGED 72 YEARS,
S/O. LUKOSE, LILLY SADANAM, THOLLURKIZHAKE VEEDU,
AYILARA, YEROOR VILLAGE, PATHANAPURAM TALUK.

BY ADV. SRI.MANOJ R.NAIR
SMT.SINDHU MANOJ

RESPONDENTS:
----

1. **RAJAN VARGHESE, S/O. GEEVARGHESE**
THOLLURKIZHAKKE VEEDU, AYILARA,
YEROOR VILLAGE, PATHANAPURAM TALUK.

2. **PONNACHAN VARGHESE,**
THOLLURKIZHAKKE VEEDU, ALYILARA,
YEROOR VILLAGE, PATHANAPURAM TALUK.

3. **MARIYAMMA VARGHESE,**
THOLLURKIZHAKKE VEEDU, AYILARA,
YEROOR VILLAGE, PATHANAPURAM TALUK.

BY ADV. SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS
SRI.AJESH. M.R.
SRI.TITUS THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.20261/2006 K

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.NO.283 OF 2004 ON THE FILES OF THE MUNSIFF'S COURT, PUNALUR.**

EXT.P2: **COPY OF THE COMPROMISE DECREE AND THE PLAN APPENDED THERETO.**

EXT.P3: **COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS BEFORE THE COURT BELOW, DTD. 17/03/2005.**

EXT.P4: **COPY OF THE PLAN PREPARED BY THE ADVOCATE COMMISSIONER WITH THE HELP OF A SURVEYOR.**

EXT.P5: **COPY OF THE AMENDMENT PETITION AS I.A.NO.265/2006.**

EXT.P6: **COPY OF THE ORDER PASSED BY THE COURT BELOW DTD. 15/07/2006.**

EXT.P7: **COPY OF THE ORDER IN I.A.265/2006 DTD. 15/07/06.**

EXT.P7: **COPY OF THE ORDER IN I.A.235/06 IN O.S.283/04 OF THE MUNSIFF COURT, PUNALUR (I.A.NO.15010/2006)**

EXT.P8: **COPY OF THE WP(C) NO.6518 OF 2006.**

/TRUE COPY/

P.S.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C).No.20261 of 2006 K

Dated this the 19th day of July, 2007.

JUDGMENT

Ext.P7 order, by which the learned Munsiff has dismissed an application for amendment of the plaint filed by the petitioner, is under challenge in this writ petition filed under Article 227 of the Constitution.

2. The application for amendment was filed after the entire evidence was recorded in the suit and the case was posted for final hearing. The amendment sought for was to change the side measurements of the plaint scheduled property item No.2 materially. According to the learned Munsiff, allowing the application will change the nature of the suit itself and the pleadings which are existing in the original plaint.

3. I am not able to agree with the said finding that the nature of the suit itself will be changed, though it is agreed to by the learned counsel for the respondents that the description of the suit property will change materially, by virtue of the amendment.

4. After the amendment of the Code of Civil Procedure by virtue of Act 46/99 and Act 22/02, the rule is that amendments are to be sought for before the trial commences. But, of course, the said rule is subject to Order VI Rule 17.

5. Having gone through the affidavit in support of Ext.P5 amendment application, I do not find any specific claim made by the petitioner that in spite of exercise of due diligence, he could not seek amendment before the trial commenced. Several witnesses have been examined on either side in the suit and in the absence of even an averment that he could not have sought for amendment in spite of exercise of due diligence earlier. Ext.P6 cannot be stated to be vitiated to the extent of warranting interference under Article 227. It is made clear that in case a decree is passed against the petitioner in the suit, Ext.P6 will not stand in the way of the petitioner contending before the court in appeal that the amendment ought to have been allowed.

Writ Petition is disposed of as above.

Sd/-

(PIUS C. KURIAKOSE)
JUDGE

sk/

//true copy//